

CUYAHOGA COUNTY DISTRICT BOARD OF HEALTH

The above stated matter came for hearing on May 24, 2017 before this Board on request of the Health Commissioner seeking a declaration of nuisance pursuant to Ohio Revised Code (ORC) 3707.01 and ORC Chapter 3767 against property owner 1705 Noble Road, LLC and operator ARCO Recycling, Inc. The Health Commissioner and Board of Health staff appeared before this Board and presented evidence and related materials and exhibits. The Cuyahoga County District Board of Health makes the following findings of fact and conclusions of law in the above referenced matter:

FINDINGS OF FACT

1. Pursuant to Ohio Revised Code (ORC) Chapter 3714, and, specifically, Section 3714.05, The Cuyahoga County Board of Health (CCBH or The Board) is the delegated authority through the Ohio Environmental Protection Agency (OEPA) for licensing, inspection and enforcement of the statutes, rules and regulations related to Construction and Demolition Debris (C&DD) facilities within Cuyahoga County; Ohio, and
2. Pursuant to ORC 3714.01(D), “‘Disposal’ means the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any construction and demolition debris into or on any land or ground or surface water or into the air, except if the disposition or placement constitutes storage;” and
3. Pursuant to ORC 3714.01(K), “‘Storage’ means the holding of construction and demolition debris for a temporary period in such a manner that it remains retrievable and substantially unchanged and, at the end of the period, is disposed of or reused or recycled in a beneficial manner;” and

4. Pursuant to ORC 3707.01, CCBH has a duty to abate and remove all nuisances within its jurisdiction and authority to order abatement and removal of any premises nuisance where, in the opinion of the Board, it is a danger to the public health and safety; and

5. Further, in accordance with ORC 3707.01, "The Board may, by its officers and employees, remove, abate, suspend, alter, or otherwise improve or purify such nuisance and certify the costs and expense thereof to the county auditor, to be assessed against the property and thereby made a lien upon it and collected as other taxes;" and

6. 1705 Noble Road, LLC became incorporated in 2014 and obtained ownership of the 1705 Noble Road , East Cleveland, Ohio property from the City of East Cleveland, Ohio.

7. ARCO Recycling, Inc. (hereinafter, "ARCO") became incorporated in Ohio on April 14, 2014, upon information and belief, obtained the right from 1705 Noble Road LLC to use the property at 1705 Noble Road, East Cleveland, Ohio (hereinafter, "the property"), and commenced operating the property as a C&DD recycling and processing facility at a time when there were no statutes, rules or regulations in the State of Ohio that regulated the temporary storage and processing of said materials;; and

8. ARCO was a designated an approved dump site for demolition contractors under contract with the Cuyahoga County Land Bank for dumping C&DD materials from demolition of residential structures in Cuyahoga County; and

9. Over the course of time, from April 2014 to January 2017, ARCO amassed and disposed of over 300,000 cubic yards of C&DD material at the property, creating a extraordinarily large pile of more than 200,000 cubic yards of C&DD material, comprised of compacted unrecognizable materials, over 40 feet in height, with a barrier wall of hard fill, co-mingled or mixed C&DD material and other non-recognizable materials as a perimeter berm approximately 10 feet wide and approximately 8 to 10 feet high; and

10. ARCO, in its original business plan provided to East Cleveland pledged to promptly recycle the C&DD material, process reclaimed materials for profit, and truck the remaining non-recyclable materials to certified C&DD landfills for dumping or disposal; and

11. ARCO failed to make any reasonable effort to recycle or process said C&DD materials, so that the C&DD materials received resulted in the creation of the extraordinarily large pile comprised of well over 200,000 cubic yards of C&DD co-mingled material that is now compacted and, in many respects, non-recognizable or reusable as recycled materials, said materials being improperly stored on the property well in excess of the two-year statutory period prescribed in ORC 3714.01(C); and

12. The property abuts several residential homes whose owners and residents, over the course of the two plus years, had been forced to endure loud construction noises, dust, odors, a large unsightly dump pile, and the possibility of environmental hazards over time and certainly during operations; and

13. This type of facility or operation is rarely approved or permitted in a residential area, with such close proximity to residences; and

14. Neighboring residential property owners and/or tenants have continually complained to East Cleveland, CCBH and the media about the blight created by the ARCO operation; and

15. On January 17, 2017, after more than two years of monitoring the operation at the property, the Ohio EPA by and through the Ohio Attorney General's Office, issued a cease and desist order and declared the ARCO operation an illegal dump site in violation of Ohio law; and

16. The City of East Cleveland, which is within the jurisdiction of CCBH, has requested that the Board take action to abate the nuisance on the property or order its abatement, and

17. The City of East Cleveland does not have sufficient funds to perform the abatement or remediation necessary to completely remove all of the materials on the property; and

18. Upon information and belief, the property owners and owners of ARCO had stated that they do not have sufficient funds to abate the nuisance; and

19. The estimated cost of removing all of the materials on the property is approximately Six Million Dollars (\$6,000,000) as determined by the Ohio EPA from measurements of the size and amount of debris and consultation with industry experts; and

20. The ARCO use of the property has generated such a large public outcry as to demand that the Board take this action to declare the property a nuisance in violation of ORC Chapters 3714 and ORC 3707.01 and Chapter 3767 in order to proceed to clean up the site as is authorized pursuant to ORC 3707.01 and other similar laws.

CONCLUSIONS OF LAW

1. The Board incorporates by reference herein all of the Findings set forth above, and the same are hereby adopted. The Board finds that sufficient evidence exists to find and declare that:

- a. The ARCO property at 1705 Noble Road, East Cleveland, Ohio, and the ARCO operations as previously described in the preamble, are in violation of ORC Chapter 3714 and the definitions of disposal and storage as cited herein above; and
- b. ARCO RECYCLING, INC.:
 1. failed to timely recycle C&DD material;
 2. stored C&DD material longer than permitted by ORC 3714.01(C) and/or 3714.01(K);
 3. received C&DD materials for well over two years with minimal removal of material;

4. created a extraordinarily large pile of co-mingled C&DD material that became compacted to the point that large trucks and heavy equipment that were driven on the pile further compacted the materials; and
5. the compaction of the materials rendered most of the materials to be unrecognizable as C&DD, in the opinion of the Board's expert sanitarians, such that the material is no longer susceptible of being recycled; and
- c. Finally, the failure to timely recycle the materials or move them off site to a certified, licensed C&DD landfill has created a nuisance in violation of Ohio law. ARCO has failed to remove the materials as ordered by the Ohio EPA in its notice of violation issued on January 17, 2017, and is believed to have insufficient funds to remove the material and return the property to its former condition.

6. This Board hereby declares the property at 1705 Noble Road, East Cleveland, Ohio a nuisance and orders remediation of the property and/or abatement of the nuisance. If the property owner or operator are unwilling or unable to perform the remediation and/or abatement as ordered, the Cuyahoga County Board of Health may perform the task provided there are sufficient funds from other sources for engaging and completion of the work. Any and all such costs shall be determined by the CCBH Chief Financial Officer and reported back to this Board for further evaluation toward assessing said costs against the tax duplicate for the property pursuant to the authority of ORC 3707.01 and Chapter 3767 of the Ohio Revised Code.

APPROVED BY:

**CUYAHOGA COUNTY DISTRICT
BOARD OF HEALTH**

BY:

Debbie L. Moss

Debbie L. Moss, President

Gregory L. Hall

James T. Gatt
James T. Gatt
Doug Wang
Doug Wang

Sherrie Williams

NOTICE OF RIGHT TO APPEAL.

This decision constitutes a final order and is subject to further review only on appeal timely presented. A Notice of Appeal of this decision to the Sewage Treatment System Appeals Board shall be filed, in writing, with the Cuyahoga County Board of Health within 30 days of the mailing of this order. Alternatively, a Notice of Appeal to the Court of Common Pleas must be filed in the office of the Clerk of Courts for Common Pleas Court within 30 days of the mailing of this order. For further information on this process, you are advised to consult an attorney.